

**TESTIMONY OF THE
NATIONAL INDIAN CHILD WELFARE ASSOCIATION
AND NATIONAL CONGRESS OF AMERICAN INDIANS
FOR THE HOUSE WAYS AND MEANS SUBCOMMITTEE
ON HUMAN RESOURCES**

REGARDING

THE HEARING ON IMPROVING WORK AND OTHER WELFARE REFORM GOALS

**Terry L. Cross
Executive Director—National Indian Child Welfare Association**



**Jacqueline Johnson Pata
Executive Director—National Congress of American Indians**



INTRODUCTION

The National Indian Child Welfare Association (NICWA) and the National Congress of American Indians (NCAI) jointly submit this statement to the Ways and Means Subcommittee on Human Resources concerning the Hearing on Improving Work and Other Welfare Reform Goals. Our primary focus will be on issues specific to American Indian and Alaska Native children and families, namely the Tribal Temporary Assistance to Needy Families program (TANF), the Native Employment Works Program (NEW), and the discretionary grants for Coordination of Tribal TANF and Child Welfare Services to Tribal Families at Risk of Child Abuse or Neglect.

First, we thank the Subcommittee for its ongoing attention to the unique needs of tribal families and children. This committee's past actions, which have supported and promoted tribal self-determination appropriately, honor the federal trust responsibility this government has with tribal governments. The federal trust responsibility is an obligation born of the United States' broken treaty promises, failures in its historical "course of dealings" with tribes, and its current role in the ownership, management, and control of lands, resources, assets, and funds. Because of this unique history, the United States consciously assumes the responsibility to ensure the well-being of its Native peoples.

From its inception in 1935 until 1996, Aid to Families with Dependant Children Program (AFDC) required tribal members and families in need to enroll in state welfare programs to receive assistance. These offices were often far from tribal communities and did not provide culturally appropriate services. For this reason, tribal members and families went underserved, making the conditions of poverty and unemployment on reservations even more dire. In 1996 Congress, due in great part to the work of this subcommittee, passed the Personal Responsibility and Work Opportunity Reconciliation Act (PWORA) (P.L. 109-171) also known as "Welfare Reform." Seeing that tribal members and families were being underserved and that the federal trust responsibility was not being honored, part of this reform was the recognition and support of tribes' authority to administer their own assistance and work readiness programs. Congress, and this committee, also recognized the difficult economic circumstances on many reservations, and PWORA gave tribes the necessary flexibility to create programs that could tackle their communities' unique needs. Additionally, due to amendments created by the Deficit Reduction Act of 2005 (P.L. 109-171), when Congress and this committee took the important action of reauthorizing PWORA, it also provided funding for programming to create, implement, and evaluate TANF programs that coordinate tribal TANF with child welfare services. Because poverty is a major risk factor for child maltreatment, these programs seek to simultaneously improve financial well-being and family well-being. For all of these important decisions, we thank this committee. By supporting the self-determination of tribes, services that better fit the unique needs of tribal constituents are now being provided, and states have been relieved from the responsibility of managing caseloads across difficult divides—culturally and geographically.

Today, under the tribal TANF block grant program, there are 63 approved tribal TANF grantees serving 298 tribes and the non-reservation Native populations over 121 counties, all of which rely on this funding to help their most needy families live at the most basic level.ⁱ Combined, all tribes/tribal programs annually receive almost \$182 million in federal funding. TANF is complemented in tribal communities by the NEW program, which currently serves 78 grantees and 10,000 clients who provide educational activities and job training and support employment activities. NEW receives over \$7.6 million in funding each year.ⁱⁱ TANF also funds 10 demonstrational grantees working at the intersection of poverty and child welfare. Each of these projects has received between \$105,000 and \$150,000 annually for a period of the last five years (2006-2011), for a total of \$7.8 million in federal funding over the total period of the program.ⁱⁱⁱ

Since PWORA and welfare reform, tribes have sought to combat poverty and unemployment with a broad range of efforts to attempt to stimulate their economies, hoping to promote job creation and alleviate poverty. In spite of these attempts, GOA reports find that unemployment and poverty rates on reservations remain high, and opportunities for economic growth are minimal.^{iv} Native people have the highest poverty rate of any racial group in the nation. 2009 data show that the poverty rate for American Indian and Alaska Native peoples was 27.3%, almost twice the national poverty rate of 14.2%.^v The average poverty rate on reservations in 2009 was 36.8%.^{vi} In fact, three of the top 10 poorest counties in America, including America's poorest county, Ziebach County, SD (which lies almost completely within the Cheyenne River Reservation), are essentially reservation counties.^{vii} Ziebach County, SD has a poverty rate of 62%.^{viii} In 2010, the American Indian and Alaska Native unemployment rate was around 15.2% compared to the white unemployment rate, which was 9.1%.^{ix} In 2005, rates of unemployment as a

percent of available labor force *on reservation* were reported to be 49%.^x The GAO reports that “prospects for improving the economic conditions of families living on reservations may be limited because many reservations lack some of the key factors shown to be associated with economic growth, for example, a skilled workforce and easy access to markets.” Tribal TANF, NEW, and child welfare grants have been invaluable resources as tribes strive to cultivate and maintain strong and healthy economies and families, in spite of the many challenges they continue to face.

Tribes have learned a great deal in the 15 years that they have provided welfare assistance, work support, and child welfare services for the neediest families in their communities. The following recommendations reflect those lessons learned.

SUCCESS OF TRIBAL TANF AND ITS COMPLEMENTARY PROGRAMS

The opportunity offered by the provisions of the PWORA and its reauthorizations to create tribal TANF has allowed tribes to restructure and integrate tribal programs and resources to create jobs, support new workers, find transportation solutions, and provide childcare. This change has been critical to the creation of new programming, the support of long-standing programming, and ultimately to help move thousands of Native people from welfare to work.

Tribes and reservations across America are very different and, therefore, have diverse needs, challenges, and cultures. By supporting self-determination, and allowing each tribe to create its own tribal welfare program and supporting services with direct funding for TANF, Native Employment Works, Child Support Enforcement, Child Care Block Grant, and child welfare (Title IV-B and IV-E), has ensured that each tribal TANF program can provide for its constituents in a manner that meets their unique circumstances and takes into account the specific circumstances of the tribe and reservation within which an individual lives and the program operates. In essence, tribal TANF and complementary funding gives tribes an opportunity to operate TANF and other programs in a way that makes sense to tribal families and communities.

The development of tribal TANF programs has reduced case loads, met work participation rates, and in many areas increased the service rates to Native peoples. The reauthorization of the TANF program provides tribes with an opportunity to expand on these demonstrated successes to fully realize the potential of the program, to better serve their constituents, and continue to relieve the overburdened state welfare programs. For the most part, states welcome the opportunity to let tribes care for their citizens because in the vast majority of cases, tribes are closest to the people in need and can provide the best service.

One particular discretionary grant program that has provided a great deal of positive change in 10 tribal communities is the Child Welfare Services to Tribal Families at Risk of Child Abuse or Neglect grant program, which has allowed these tribal grantees to fully integrate their family services to focus on family preservation, something not only good for the well-being of the child, but also the financial stability of the family. Ten tribal grantees have been given the opportunity to spend five years working at the intersection of child maltreatment and poverty services.

Native children are more likely to be removed from their homes because of neglect than any other reason. By coupling TANF with child abuse and neglect programming, tribal grantees have designed new and innovative wraparound services to help prevent the entry of children into the system, reunify parents and children, and work on permanency planning that deals not just with the symptom of child abuse or neglect but also with the larger problem of poverty. This program has had positive results, and these tribal grantees have become model programs for other tribes and even states to look to in order to combat the problems that exist where poverty and child maltreatment intersect.

RECOMMENDATIONS

Maintain Flexibility in Tribal TANF

This subcommittee wisely helped create tribal TANF and corresponding programs, with the flexibility necessary to provide Native people with the extra support and opportunities they would need to move from welfare to work. Although this built-in flexibility does not appear to alter TANF in any substantial way, it has been invaluable to tribal programming and is an important step in respecting tribal rights to self-determination in policy and programming.

The flexible provisions include 1) the ability of tribes to determine their own definition of what activities meet the mandatory “work” participation for TANF recipients, including education and training; 2) different employment participation rates than federal state requirements; 3) more generous time limits for the receipt of cash assistance than the federally prescribed 60 months; 4) the ability to exempt families receiving benefits from time limits entirely if they reside on reservations where adult joblessness rates are 50% or higher; 5) the ability of tribes to define their service population by setting program eligibility criteria. Lastly, tribes share the same flexibility that states have in determining what types of work supports, such as child care, transportation, and job training, they will provide to recipients.

Currently, the federal TANF law does not provide the same flexibility for Alaska Native villages operating tribal TANF as those in the lower 48 states. A provision known as the “parity provision” requires that Alaska Native programs be equitable or “comparable” to the state TANF program. This provision requires the tribes in Alaska to develop and operate programs that are similar to the State of Alaska’s program. Tribal governments in the lower 48 states can develop and operate TANF programs that are similar to or different than what their state offers, providing them with the ability to shape the program to best address the unique issues that exist in tribal communities. The “parity provision” does not exist in other federal programs and has been a hindrance to many tribes in Alaska that need the increased flexibility to develop the most effective programs.

Allow Tribes to Negotiate Funding Levels

Although the national numbers of Native families receiving TANF assistance have decreased since the program began in 1996, in some states Native people represent a growing and largely disproportionate share of the TANF assistance caseloads.^{xi} For example, in 2008 in North Dakota, South Dakota, and Montana, American Indian TANF assistance caseloads made up 58.7%, 74.6%, and 54.5% of all cases respectively (tribal and state TANF) in the state.^{xii} Tribal TANF programs carry a large portion of this burden. Additionally, a GAO study found that, in spite of the overall decrease of American Indian and Alaska Native caseloads nationally, many tribes with reservations report that their caseloads have stayed the same, if not increased, since the transition to tribal TANF.^{xiii} This means that funding is currently not being distributed appropriately, as many tribes (and some states) are being underfunded while states (and some tribes) are receiving more than their share of funding for tribal TANF recipients.

Furthermore, TANF assistance block grant funding for tribes has not increased since welfare reform in 1996. The funding levels in place are based on federal payment to the states for American Indian and Alaska Native families who were residing in certain areas for the fiscal year of 1994. There are many reasons that this calculation provides inaccurate information about eligible Native families in 2011: 1) These expenditures are based on numbers calculated when there were no existing tribal TANF programs—before tribal TANF programs, Native peoples were underrepresented in TANF caseloads because offices were often far away, state outreach was limited, and cultural competency was not a major part of ADCF programming; 2) This data does not take into account inflation and other changes to the economy since 1994, or the fact that welfare reform now requires the provision of expanded support services; 3) States have long operated welfare and other social service programs, but tribes have new infrastructure and administrative costs associated with the development and implementation of these programs that are not accounted for in the FY1994 funding levels for tribal families in need.

Of additional concern is the fact that tribes are not entitled to receive any portion of state MOE funds, are ineligible for funds to evaluate performance efforts, and ineligible for bonus incentives for reducing caseloads or out-of-wedlock birth.

All of these factors strongly suggest that the problem is even more concerning than the imbalanced distribution that caseload numbers suggest. Tribes that have developed and are attempting to administer TANF plans are facing serious funding challenges due to their infrastructure needs, the stagnation if not increase in their caseloads, and the change in needs of all American families from 1994 to 2011.

Increasing Technical Assistance Resources for Tribes

The success of TANF is greatly dependant on tribes’ abilities to meet their recipients’ needs for economic support, education, and job training. Tribes have years of informal experience working within

their traditional belief systems and cultures to support their most needy members. It is for this reason, and the insight of this subcommittee, that Congress rightfully empowered tribes to begin to run their own formal welfare programs through PWORA in 1996. Nonetheless, tribes have only been able to run their own formal TANF programs and integrate the many services allowable under TANF for less than 15 years. Tribal TANF administrators, many of whom had no previous formal welfare work experience, had to quickly develop expertise in both planning and operating a comprehensive welfare program under complicated (albeit necessarily flexible) constraints. These same administrators were also charged with the tasks of training staff on eligibility determination, effective case management, resource provision, data reporting requirements, and administration, while at the same time setting up information systems, leveraging resources, and conducting feasibility studies. Starting these programs from scratch with little to no start-up funding, little to no structure, and difficult caseloads has forced tribes to learn as they go. What tribes have learned is that running TANF programming, including all of the possible and/or necessary services can be a great challenge. Often times the support and advice available from federal agencies and federal partners is not as helpful as it could be because these entities do not always take into account reservation life, cultural needs/norms, and other unique circumstances, such as the economic base of tribes, in successfully operating TANF programs.

The Department of Health and Human Services (HHS), and specifically the Administration for Children and Families (ACF) have made progress in supporting tribal welfare programming, but there is more support needed. ACF has over 75 years of experience running welfare programming, job training programs, and working in collaboration with states as well as with public and private agencies, and is an invaluable resources to tribes and tribal TANF programs. However, more can be done to tailor technical assistance and training resources to the needs of tribal TANF. One approach is the funding of a tribal TANF resource center that could specifically focus on tribal TANF program development and technical assistance needs of tribes. This could include the funding of tribal TANF Development Grants that would allow tribes an opportunity to have funding support as they prepare their infrastructure and negotiate collaborative arrangements with states before they submit an application. This approach has been very valuable in helping tribes new to other federal programming such as Title IV-E and could also play an important role in increasing tribal participation in TANF as well.

Authorize Direct Tribal Access to Title XX Social Services Block Grant

It is important to note that welfare and welfare reform are much broader than TANF alone. The needs of individuals seeking welfare services often reach far beyond the specific authorizations and allowance of TANF. TANF is a flexible funding stream to provide time-limited assistance to needy families designed to help facilitate their transition from welfare to work. Although TANF the core of welfare reform, the linkages between TANF and many other social support and assistance programs is not only common sense, it is well documented. A successful welfare program includes financial assistance for the most needy families including TANF, child support, and foster care; job training programs to build skills and human capital, and NEW provides resources for some of these services; support services that help recipients reach find stability in order to seek employment, including mental health, substance abuse, and health care; child care to help recipients get and keep a job; transportation to help recipients get to and from a job and remain reliable employees; and perhaps most important in tribal communities, economic development initiatives that provide opportunities to earn a living wage and become self-sufficient.

In order to provide this range of services, tribes need access to a variety of funding sources, either because the program is not authorized under TANF or because the funding available under TANF is not sufficient to provide the entire range of necessary funding. Recently, and in great part due to the work of this committee, an important funding source for foster care provision, Title IV-E, has been opened up to tribes, completing one more link in the necessary welfare service chain. For this, we thank you and ask that you continue to recognize the continuum of service necessary for successful welfare programs when considering reauthorization of TANF.

One such program is Title XX of the Social Security Act (42 U.S.C. 1397 et seq.), which provides for the social services block grant—something to which tribes have yet to gain access. This block grant is currently funded at \$1.7 billion a year, and allows states to create a wide range of programming so long as the programming has one of the following five goals: “1) achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency; 2) achieving or maintaining self-sufficiency, including reduction or prevention of dependency; 3) preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interest, or preserving, rehabilitating, or

reuniting families; 4) preventing or reducing inappropriate institutional care by providing for community-based care, home-based care or other forms of less intensive care; and/or 5) securing referral or admission for institutional care when other forms of care are not appropriate or providing services to individuals in institutions.”^{xiv} As these goals make clear, this grant offers the opportunity to provide many of the welfare services not covered by TANF, and where it does not offer the opportunity to cover necessary services, it can be used to open up different unrestricted funds to provide the necessary services. Its flexibility is an essential tool and support for states’ TANF and welfare provision, but a tool to which tribes who now run their own TANF programs do not have access.

Reaffirm Commitment to 477 Programs within ACF

In 1992, Congress created a unique law among federal legislation that recognized that the disaggregated funding, revenue and resources available to tribal governments for job support and job creation, were preventing tribes from moving individuals into the work force in an efficient and effective manner. This legislation, Public Law 102-477 or “477” is the Indian Employment, Training, and Related Services Demonstration Act of 1992, as amended by Public Law 106-568, the Omnibus Indian Advancement Act of 2000. The 477 program allows federally recognized tribes and Alaska Native entities to combine formula-funded employment and training-related federal grants funds and reporting requirements into a single plan with a single budget. The Department of Labor lauds this programming saying:

“The number(s) of individuals served with the same total resources has increased greatly due to the reduction of administrative burden(s) imposed by the individual pieces of legislation incorporated in the entities’ “477” plan. As a result, outcomes such as job placements, successful completion of individual client programs, and support of tribal economic development efforts have also increased or been enhanced... Spending fewer resources on administrative requirements means more of those resources are devoted to client services. This is especially important for smaller grantees involved in the “477” demonstration, whose resources are often not commensurate with the needs of their people.”^{xv}

TANF is listed as one of funds eligible for combination. This important law, which helps tribes conserve administrative costs and provide more and improved services, is currently being ignored and in some instances even denied by the Administration. HHS and ACF are resisting tribes’ attempts to combine funding and reporting for job programs as mandated by this law.

Fully Fund Tribal TANF

In order for most tribes to meet the TANF requirements, they must work with their states. In the first year when a tribe applies for TANF funds, they must identify the number of people in their service area and population that are eligible. This requires tribes to work with states to obtain AFDC data from the state concerning the number of people in the service area that were receiving AFDC before PWORA in 1996. This then becomes the federal match amount. The non-federal match is not provided by the federal government, thus, tribal TANF programs are currently funded in part through the states. State contributions to tribal TANF are necessary; because tribes have little and sometimes no tax revenue and/or struggle to create revenue producing economic development ventures of the size necessary to meet the TANF match requirements. In spite of the necessity for tribal TANF, the improved success seen when tribes (as compared to states) provide social services for their members, and the reality that without the existence of tribal TANF states would have to assume responsibility and payment for these tribal members, states are still not required to pay this match.

For the majority of America’s political history, the federal government has assumed all responsibility for the relationship with tribes, particularly in terms of social service provision and support—many of the early treaties promised to care and provide for tribes in exchange for land, the foundation for the Federal Trust relationship. This government-to-government relationship is grounded in early case law, the Constitution, and the aforementioned historic use of treaties as a means of mutual regulation between tribes and the United States.

It has only been recently that the federal government has begun to ignore its previous course of dealings as well as the Constitution to defer to states to deal directly with tribes for issues such as TANF match funding. These funding negotiations and data provision conversations are often difficult and strained because there is a limited working relationship in place, and they are competing for the same pot of small resources. The course of dealings varies greatly, with some states refusing to even meet with tribes in their state to discuss match funding. This inconsistency is problematic for many tribal TANF programs who are unsure year to year if the state funding will meet their match needs, or if they can count on a match from the state at all.

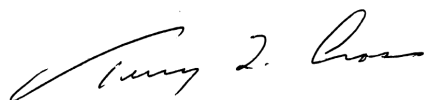
CONCLUSION

Overall, tribes strongly support welfare reform and look forward to taking the next step to increasing opportunity on reservations and in tribal communities. Tribal TANF programs are doing what most states are just now finding to be difficult, working with large caseloads of “hard-to-serve” individuals. Tribal TANF has increased the number of tribal members who have access to support services, job services, and job opportunities resulting in an increase in tribal member involvement in meaningful work activities and improvements in their progress on Individual Responsibility plans. Tribal TANF has also worked with partners, including faith-based organizations, to promote family formation, responsibility fatherhood, and worked to reduce teen pregnancy rates. Finally, tribal TANF has been used to create some limited economic development through micro-enterprise and development account programming, as well as job creation.

Thank you for considering our recommendations and for allowing us to share our experience and knowledge with regard to these critical issues affecting American Indian and Alaska Native children and families. We recognize that these are challenging budgetary times and appreciate the efforts of this subcommittee to make sure that America’s neediest families are supported as they transition from welfare to work. The subcommittee’s continued commitment to helping all Americans have the opportunity to live the American Dream is essential to the well-being of hundreds of thousands of native children and families.

We look forward to working with you on reauthorization of the Tribal Temporary Assistance to Needy Families program, the Native Employment Works Program, and the discretionary grants for Coordination of Tribal TANF and Child Welfare Services to Tribal Families at Risk of Child Abuse or Neglect.

If you have questions or comments regarding this testimony, please contact NICWA Government Affairs Director David Simmons at desimmons@nicwa.org, or NCAI Policy Analyst Ahniwake Rose at arose@ncai.org.



Terry L. Cross

Executive Director—National Indian Child Welfare Association

5100 SW Macadam Avenue, Suite 300, Portland, OR 97239 Phone: 503-222-4044



Jacqueline Johnson Pata

Executive Director—National Congress of American Indians

1516 P Street NW, Washington, DC 20005 Phone: (202) 466-7767

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